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VINTAGE WINE ESTATES, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JaM CELLARS, INC.,

Plaintiff,

vs.

VINTAGE WINE ESTATES, INC.,

Defendant.

Case No. 3:17-cv-01133-CRB

**DEFENDANT'S FIRST AMENDED
ANSWER AND AFFIRMATIVE DEFENSES**

DEMAND FOR JURY TRIAL

Defendant Vintage Wine Estates, Inc. ("Defendant"), hereby answers the Complaint filed
by Plaintiff JaM Cellars, Inc. ("Plaintiff") as follows:

JURISDICTION

1. Defendant admits the allegations contained in Paragraph 1 of the Complaint.
2. Defendant admits the allegations contained in Paragraph 2 of the Complaint.

VENUE

3. Defendant admits the allegations contained in Paragraph 3 of the Complaint.

INTRADISTRICT ASSIGNMENT

4. Defendant admits the allegations contained in Paragraph 4 of the Complaint.

THE PARTIES

5. Defendant is informed and believes that the allegations in Paragraph 5 of the Complaint are true and correct and on that basis admits same.

6. Defendant admits the allegations contained in Paragraph 6 of the Complaint.

NATURE OF THE CASE

7. With regard to the allegations contained in Paragraph 7 of the Complaint, Defendant admits that JaM purports to own U.S. Trademark Registration No. 3,999,253 for wine, but as to all other allegations and/or characteristics of Plaintiff's claims, Defendant is without sufficient information and on that basis denies same.

ALLEGATIONS COMMON TO ALL CLAIMS

8. Defendant is informed and believes that the allegations in Paragraph 8 of the Complaint are true and correct and on that basis admits same.

9. Defendant denies each and every allegation in Paragraph 9 of the Complaint.

10. Defendant is without knowledge or information sufficient to form a belief as to the truthfulness of the allegations in Paragraph 10 of the Complaint and therefore denies same.

11. Defendant is without knowledge or information sufficient to form a belief as to the truthfulness of the allegations in Paragraph 11 of the Complaint and therefore denies same.

12. Defendant is without knowledge or information sufficient to form a belief as to the truthfulness of the allegations in Paragraph 12 of the Complaint and therefore denies same.

13. Defendant is without knowledge or information sufficient to form a belief as to the truthfulness of the allegations in Paragraph 13 of the Complaint and therefore denies same.

14. Defendant is without knowledge or information sufficient to form a belief as to the truthfulness of the allegations in Paragraph 14 of the Complaint and therefore denies same.

15. Defendant is without knowledge or information sufficient to form a belief as to the truthfulness of the allegations in Paragraph 15 of the Complaint and therefore denies same.

1 16. Defendant is without knowledge or information sufficient to form a belief as to the
2 truthfulness of the allegations in Paragraph 16 of the Complaint and therefore denies same.

3 17. Defendant is without knowledge or information sufficient to form a belief as to the
4 truthfulness of the allegations in Paragraph 17 of the Complaint and therefore denies same.

5 18. Defendant denies each and every allegation in Paragraph 18 of the Complaint.

6 19. Defendant denies that it and Kroger together “developed” the two wine brands, and that
7 they decided to trade on the goodwill of Plaintiff’s BUTTER wine or to mislead consumers or
8 divert sales from Plaintiff’s brand. Based on JaM’s definition of “private label,” Defendant
9 denies that there is a “private label” arrangement for the subject wine. Defendant admits the
10 remaining allegations in Paragraph 19 of the Complaint.
11

12 20. Defendant admits the allegations contained in Paragraph 20 of the Complaint.

13 21. Defendant admits the allegations contained in Paragraph 21 of the Complaint.

14 22. Defendant admits the allegations contained in Paragraph 22 of the Complaint.

15 23. Defendant admits the allegations contained in Paragraph 23 of the Complaint.

16 24. Defendant is without knowledge or information sufficient to form a belief as to the
17 truthfulness of when Plaintiff became aware of Defendant’s applications and therefore denies
18 same. Defendant admits the remaining allegations contained in Paragraph 24 of the Complaint.
19

20 25. Defendant admits the allegations contained in Paragraph 25 of the Complaint.

21 26. Defendant is without knowledge or information sufficient to form a belief as to the
22 truthfulness of when Plaintiff became aware of Defendant’s Certificate of Label Approval
23 applications and therefore denies same. Defendant admits the remaining allegations contained in
24 Paragraph 26 of the Complaint.
25

26 27. Defendant is without knowledge or information sufficient to form a belief as to the
27 truthfulness of when Plaintiff learned the matters alleged in the third sentence of Paragraph 27
28 and therefore denies same. Defendant admits the remaining allegations contained in Paragraph

1 27 of the Complaint.

2 28. Defendant admits the allegations contained in Paragraph 28 of the Complaint.

3 29. Defendant admits that the approved label drops the word “wines” and splits” Butterknife”
4 into two words. Defendant denies the remaining allegations contained in Paragraph 29 of the
5 Complaint.

6 30. Defendant is without knowledge or information sufficient to form a belief as to what
7 Plaintiff was told by Kroger and therefore denies the allegations in Paragraph 30 of the
8 Complaint.
9

10 31. Defendant denies the allegations contained in Paragraph 31 of the Complaint, except that
11 Defendant admits that it was on statutory and actual notice of Plaintiff’s claimed trademark.

12 32. Defendant admits the allegations contained in Paragraph 32 of the Complaint that
13 Vintage has used the BUTTER BOMB and BUTTER KNIFE marks in commerce. As to the
14 allegation that “Kroger has confirmed,” Defendant is without sufficient knowledge or belief and
15 on that basis denies the allegation.
16

17 33. Defendant admits the allegations contained in Paragraph 33 of the Complaint.

18 34. Defendant denies the allegations contained in Paragraph 34 of the Complaint, except that
19 Defendant admits that the parties’ labels are used on chardonnay wine produced from California
20 grapes.

21 35. Defendant admits the allegations contained in Paragraph 35 of the Complaint that the
22 BUTTER BOMB and BUTTER KNIFE marks will be sold in the same channels of trade to the
23 same general class of consumers. As to the remaining allegation that the wines will be sold in
24 the same Kroger stores, Defendant states that the BUTTER BOMB wine will be sold in Kroger
25 stores and BUTTER KNIFE wine will not.
26

27 36. Defendant denies the allegations contained in Paragraph 36 of the Complaint.

28 37. Defendant denies the allegations contained in Paragraph 37 of the Complaint.

1 38. Defendant denies the allegations contained in Paragraph 38 of the Complaint.

2 39. Defendant denies the allegations contained in Paragraph 39 of the Complaint.

3 40. Defendant denies the allegations contained in Paragraph 40 of the Complaint.

4 41. Defendant denies the allegations contained in Paragraph 41 of the Complaint.

5 42. Defendant denies the allegations contained in Paragraph 42 of the Complaint.

6 **CLAIM ONE**

7 43. Defendant incorporates by reference all of the foregoing allegations and averments of its
8 answer to the Complaint.

9 44. Defendant admits the allegations contained in Paragraph 44 of the Complaint, except that
10 Defendant denies that Plaintiff has priority in the BUTTER BOMB or BUTTER KNIFE
11 trademarks.

12 45. Defendant admits that the parties' trademarks are used on California Chardonnay wine
13 and would be sold and promoted to the same consumers in the same channels of trade. Defendant
14 denies the remaining allegations contained in Paragraph 45 of the Complaint.

15 46. Defendant denies the allegations contained in Paragraph 46 of the Complaint.

16 47. Defendant denies the allegations contained in Paragraph 47 of the Complaint.

17 **CLAIM TWO**

18 48. Defendant incorporates by reference all of the foregoing allegations and averments of its
19 answer to the Complaint.

20 49. Defendant denies the allegations contained in Paragraph 49 of the Complaint.

21 50. Defendant denies the allegations contained in Paragraph 50 of the Complaint.

22 51. Defendant denies the allegations contained in Paragraph 51 of the Complaint.

23 52. Defendant denies the allegations contained in Paragraph 52 of the Complaint.

24 **CLAIM THREE**

25 53. Defendant incorporates by reference all of the foregoing allegations and averments of its

1 answer to the Complaint.

2 54. Defendant denies the allegations contained in Paragraph 52 of the Complaint.

3 55. Defendant is without knowledge or information sufficient to form a belief as to the
4 truthfulness of the allegations in Paragraph 55 of the Complaint and therefore denies same.

5 56. Defendant denies the allegations contained in Paragraph 56 of the Complaint.

6 57. Defendant denies the allegations contained in Paragraph 57 of the Complaint.

7 58. Defendant denies the allegations contained in Paragraph 58 of the Complaint.
8

9 **CLAIM FOUR**

10 59. Defendant incorporates by reference all of the foregoing allegations and averments of its
11 answer to the Complaint.

12 60. Defendant denies the allegations contained in Paragraph 60 of the Complaint.

13 61. Defendant denies the allegations contained in Paragraph 61 of the Complaint.

14 62. Defendant denies the allegations contained in Paragraph 62 of the Complaint.
15

16 **CLAIM FIVE**

17 63. Defendant incorporates by reference all of the foregoing allegations and averments of its
18 answer to the Complaint.

19 64. Defendant denies the allegations contained in Paragraph 64 of the Complaint.
20

21 **CLAIM SIX**

22 65. Defendant incorporates by reference all of the foregoing allegations and averments of its
23 answer to the Complaint.

24 66. Defendant denies the allegations contained in Paragraph 64 of the Complaint.
25

26 **PLAINTIFF'S PRAYER FOR RELIEF**

27 Defendant denies that Plaintiff is entitled to any of the relief requested in Paragraphs 1-8 of
28 Plaintiff's Prayer for Relief.

1 confusion, mistake, or to deceive as to the affiliation, connection or association of Defendant
 2 with Plaintiff, or as to the origin, sponsorship, or approval of Defendant's goods by Plaintiff.
 3 Therefore, there can be no impairment or harm to Plaintiff's Trademark due to Defendant's use
 4 and registration of Defendant's Trademarks and Defendant's Trademarks are capable of
 5 peacefully coexisting with Plaintiff's Trademark as well as the other BUTTER-formative marks
 6 on the U.S. Register and in use in commerce for wine.

7 **THIRD AFFIRMATIVE DEFENSE**

8 3. As a third affirmative defense, Plaintiff's Complaint, and each and every cause of action
 9 therein, fails to state a claim upon which relief may be granted.

10 **CONCLUSION**

11 WHEREFORE, Defendant prays for a judgment and order as follows:

- 12 1. Dismissing with prejudice the entirety of Plaintiff's Complaint and each of the
- 13 causes of action stated therein and ordering that Plaintiff take nothing by its
- 14 Complaint;
- 15 2. Awarding Defendant its damages, costs, investigative expenses and attorneys'
- 16 fees in defending this action; and
- 17 3. Awarding Defendant such other and further relief as the Court may determine to
- 18 be just and proper under the circumstances.

19 Dated:

Respectfully submitted,
 OWEN, WICKERSHAM & ERICKSON, P.C.

21
 22 By: 

Melville Owen
 Lawrence G. Townsend
 Kathleen E. Letourneau

25 Attorneys for Defendant
 26 VINTAGE WINE ESTATES, INC.

DEMAND FOR JURY TRIAL

Defendant Vintage Wine Estates, Inc. hereby requests a jury trial in this matter.

Dated:

OWEN, WICKERSHAM & ERICKSON, P.C.

By: 

Melville Owen

Lawrence G. Townsend

Kathleen E. Letourneau

Attorneys for Defendant

VINTAGE WINE ESTATES, INC.